IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2722 OF 2006
AND
FIRST APPEAL NO.2723 OF 2006

M/s.Ingawale Patil Construction ...Appellant
(in both the Appeals)

vs.

E.S.I.Corporation ...Respondent
(in both the Appeals)

Mr.K.S.Bapat with Mr.Avinash Fatangare for the Appellant
Mr.H.V.Mehta for the Respondent.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 8,2007.

P.C.:

1. The submissions of the Advocates for the parties were heard on the last date. The Appellant is the Applicant in an Application under section 75 of the Employees' State Insurance Act,1948 (hereinafter referred to as the said Act of 1948). An Application was filed by the Appellant challenging the orders dated 27th April 2006 and 30th June 2006 passed by the Respondent on the ground that the said Act of 1948 has no application to the establishment of the Appellant.

2. Under section 75 (2)(B) of the said Act of 1948, the Appellant was required to deposit with the Trial court 50% of the amount due as claimed by the Corporation. An Application was made at Exh.C-4 by the Appellant praying for waiver of the deposit in accordance with the powers conferred on the Trial Court by the proviso to sub section 2 (B) of section 75 of the

said Act of 1948. Another Application was made at Exh.C-2 praying for stay of execution and operation of the orders which were challenged by filing application under section 75 of the said Act of 1948. The said two Applications were rejected by a common order dated 25th August 2006. The said order is impugned in the First Appeal No.2722 of 2006. After rejection of the said Application at Exh.C-2, the appellant made another Application at Exh.C-14 for stay of operation of order of recovery. The Appellant offered to deposit 50% of the amount of demand. By order dated 12th September 2006, the Trial Court rejected the said Application. This order has been impugned in First Appeal No.2723 of 2006.

3. By order dated 27th April 2006 passed under section 45-A of the said Act of 1948, the Appellant was called upon to pay contribution in the sum of Rs.1,62,963/-. It is not in dispute that the Appellant has subsequently deposited a sum of Rs.81,500/- with the Trial court.

4. So far as the Appeal challenging the order passed on Application for waiver is concerned, the same does not survive in view of deposit of the 50% of the demand. Only one Appeal survives which is First Appeal No.2723 of 2006 filed for challenging the order rejecting the Application for interim relief at Exh.C-14. In the order dated 12th September 2006, the learned Trial Judge has observed that there is no specific

provision for grant of interim relief or stay under the said Act of 1948 and therefore, the court has to decide the Application by applying parameters of Order XXXIX Rule 1 and 2 of the Code of Civil Procedure,1908.

5. Under section 75 of the said Act of 1948 very wide powers are conferred on the E.S.I.Court which include the power to decide whether the provisions of said Act of 1948 are applicable to a particular establishment. Under section 78 of the said Act of 1948, certain powers of the Civil court are conferred on the E.S.I. court. So far as the powers of the court are concerned, it will be necessary to refer to the decision of the Apex Court in case of State of Andhra Pradesh Vs. Golkonda Linga Swamy and another [(2004) 6 S.C.C. page 522]. Dealing with the issue of inherent powers of the courts and Tribunals, the Apex Court in paragraph 5 of the decision observed as under :

"5...No legislative enactment dealing with procedure can provide for all cases that may possibly arise. **Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law.** That is the doctrine which finds expression in the section which merely recognises and preserves inherent

> powers of the High Courts. **All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice** on the principle quando lex aliquid alique concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist).
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> (Emphasis added)

6. Therefore, while exercising the power under section 75 of the said Act of 1948, the E.S.I. court does possess a power to grant appropriate interim relief which will be in the aid of final relief which may be granted under section 75.

7. Shri Bapat the learned Counsel for the Appellant fairly states that the Appellant will deposit with the Trial Court a further amount of Rs.45,000/- within a period of four weeks from today. Statement is accepted. If the amount of Rs.45,000/- is deposited, substantial part of the amount demanded will be secured. There are various challenges raised in the Application under section 75 of the said Act of 1948 including a challenge on the ground that the Appellant was not heard before passing the order under section 45-A of the said Act of 1948. In my view, in the light of the assurance of the

Appellant to deposit an amount of Rs.45,000/-, this is a fit case where further coercive action shall not be taken against the Appellant during the pendency of the Application under section 75 of the said Act of 1948.

8. Hence, I dispose of the Appeals by passing the following order :

i) First Appeal No.2722 of 2006 does not survive and the same is disposed of.

ii) Pending final disposal of the Application (ESI 31/2006), no coercive steps shall be taken against the Appellant on the basis of the orders dated 27th April 2006 and 30th June 2006 subject to the Appellant depositing a sum of Rs.45,000/- with the trial court within a period of six weeks from today. The deposit of amount by the Appellant will be subject to final outcome of the Application.

iii) If the amount is not deposited with stipulated period, the Respondent-Corporation will be free to take coercive steps.

iv) Accordingly, First Appeal No.2723 of 2006 is partly allowed. There will be no order as to costs.

JUDGE